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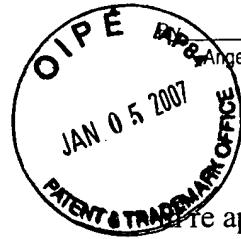
PATENT

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attorney Docket No. S-9-5:

On 1507

Angela Loding



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: David Hovda et al. ) Confirmation No.: 8367  
Application No.: 10/799,491 ) Examiner: Lee S. Cohen  
Filing Date: March 12, 2004 ) Art Unit: 3739  
Title: METHODS AND APPARATUS FOR ) **COMMUNICATION**  
TREATING INTERVERTEBRAL DISCS )  
)

Mail Stop Amendment  
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Alexandria, VA 22313-1450

Sir:

The following information is being brought to the Examiner's attention.

I. **LITIGATION ACTIVITY**

A. *Ethicon* litigation

Applicant brings the following information and list of materials to the attention of the Examiner. On February 13, 1998, ArthroCare Corporation filed a lawsuit in the United States District Court for the Northern District of California against defendants Ethicon, Inc., Mitek Surgical Products, Inc., and Gynecare, Inc., alleging infringement of U.S. Patent Nos. 5,697,909, 5,697,536, 5,697,281, and 5,697,882. The case was assigned Case No. C98-00609 WHO (the "*Ethicon* litigation"). The *Ethicon* litigation terminated in June 1999, with the defendants taking a license from ArthroCare under the patents-in-suit. The defendants paid ArthroCare a license fee and have paid ongoing royalties on sales in the United States of certain arthroscopy and gynecology products covered by these patents.

After the *Ethicon* litigation terminated, Applicant was apprised by a third party of section 2001.06(c) of the Manual of Patent Examining Procedure ("MPEP") with respect to the prosecution of

applications for patents other than those at issue in the *Ethicon* litigation and that were pending before the *Ethicon* litigation was commenced, namely, U.S. Application Nos. 08/807,111 (now U.S. Patent No. 5,891,095), 08/766,382 (now U.S. Patent No. 5,888,198), and 08/760,768 (now U.S. Patent No. 5,766,153).

Although not required to do so, Applicant did bring the *Ethicon* litigation to the attention of Examiner Mendez during the prosecution of at least U.S. Application Nos. 08/807,111 (now U.S. Patent No. 5,891,095), 08/766,382 (now U.S. Patent No. 5,888,198), and 08/795,686 (now U.S. Patent No. 5,871,469), during a telephone conference relating to those applications. Applicant also submitted the prior art that was principally relied on by the defendants in the *Ethicon* litigation to Examiner Mendez during the prosecution of U.S. Application Nos. 08/807,111 (now U.S. Patent No. 5,891,095), 08/766,382 (now U.S. Patent No. 5,888,198), and 08/795,686 (now U.S. Patent No. 5,871,469). Indeed, Applicant withdrew one of those pending applications, namely, U.S. Application No. 08/807,111 (now U.S. Patent No. 5,891,095), from allowance to provide Examiner Mendez with the opportunity to consider those references.

In addition, Applicant provides the following list of materials from the *Ethicon* litigation that reflect the defendants' and ArthroCare's primary arguments relating to issues of validity and enforceability:

1. ArthroCare's Complaint For Patent Infringement Of U.S. Patent Nos. 5,697,909; 5,697,281; 5,697,882; And 5,697,536 filed February 13, 1998;
2. Plaintiff ArthroCare's Motion For Preliminary Injunction Against Defendant Ethicon And Mitek, filed March 10, 1998.
3. Answer And Counterclaim Of Defendants Ethicon, Inc., Mitek Surgical Products, Inc., And Gynecare, Inc., filed April 6, 1998;
4. Plaintiff ArthroCare's Motion To Strike Affirmative Defenses And To Strike Defendants' Counterclaim In Part Or, In The Alternative, For a More Definite Statement, filed April 17, 1998;
5. Defendants' Opposition To ArthroCare's Motion To Strike Affirmative Defenses And To Strike Defendants' Counterclaim In Part Or, In The Alternative For A More Definite Statement And Points And Authorities In Support Of Conditional Motion To File An Amended Answer And Counterclaim, filed May 7, 1998;
6. ArthroCare's Reply In Support of Motion To Strike Affirmative Defenses And To Strike Defendants' Counterclaim In Part Or, In The Alternative, For A More Definite Statement, filed May 14, 1998;
7. Memorandum Decision And Order Regarding ArthroCare's Motion To Strike And Defendants' Motion For Leave To File An Amended Answer And Counterclaim, issued June 5, 1998;
8. Amended Answer And Counterclaim of Defendants Ethicon, Inc., Mitek Surgical Products, Inc., And Gynecare, Inc., filed June 22, 1998;

9. ArthroCare's Reply to Defendants' Amended Counterclaim, filed July 6, 1998;
10. ArthroCare's Initial Disclosure Of Asserted Claims Pursuant To Local Rule 16-7, served March 30, 1998;
11. Defendants' Initial Disclosure of Prior Art Pursuant To Local Rule 16-7, served May 26, 1998;
12. Plaintiff ArthroCare's Corporation's Opening Claim Construction Brief, filed May 11, 1998;
13. Ethicon, Inc.'s Claim Construction Brief, filed May 22, 1998;
14. Joint Claim Construction Statement Pursuant To Civil Local Rule 16-11(b)(1) For Claim Construction Hearing, filed May 29, 1998;
15. Plaintiff ArthroCare's Corporation's Reply To Defendants' Claim Construction Brief, filed May 29, 1998;
16. Memorandum Decision And Order Regarding Claim Construction, issued July 6, 1998;
17. Defendants' Petition For Permission To Appeal Pursuant To 28 U.S.C. §1292(b) filed with the U.S. Court of Appeals for the Federal Circuit on July 16, 1998;
18. Plaintiff's Answer To Defendants' Petition For Permission To Appeal Pursuant To 28 U.S.C. §1292(b), filed July 23, 1998;
19. Federal Circuit's Order On Petition For Permission To Appeal, issued August 20, 1998;
20. Summary Of Defendant Ethicon's Opposition To Plaintiff ArthroCare's Motion For Preliminary Injunction, filed July 23, 1998;
21. Ethicon's Opposition To Plaintiff ArthroCare's Motion For Preliminary Injunction, filed July 23, 1998;
22. Declaration Of John R. LaCourse In Opposition To ArthroCare's Motion For Preliminary Injunction, filed July 23, 1998;
23. Declaration Of Robert D. Tucker Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction, filed July 23, 1998;
24. Declaration Of Robert A. Armitage, Esq., Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction , filed July 23, 1998;
25. Supplemental Declaration Of Robert A. Armitage, Esq., In Support Of Ethicon's Opposition To Plaintiff ArthroCare's Motion For Preliminary Injunction, filed August 4, 1998;
26. ArthroCare's Reply Memorandum In Support Of Motion For Preliminary Injunction, filed August 6, 1998;
27. Declaration Of James Doss In Support Of ArthroCare's Motion For Preliminary Injunction, filed August 6, 1998;

28. Reply Declaration Of Philip E. Eggers In Support Of ArthroCare's Motion For Preliminary Injunction, filed August 6, 1998;
29. Reply Declaration Of John T. Raffle In Support Of ArthroCare's Motion For Preliminary Injunction, filed August 6, 1998;
30. Ethicon's Supplemental Opposition To Plaintiff ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998.
31. Supplemental Declaration Of Robert D. Tucker, Ph.D., M.D. Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
32. Supplemental Declaration Of John R. LaCourse, Ph.D., Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
33. Direct Examination Of Robert D. Tucker, Ph.D., M.D., Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction; filed September 3, 1998;
34. Direct Examination Of Robert A. Armitage, Esq., Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
35. Direct Examination Of John R. LaCourse, Ph.D., Filed In Support Of Ethicon's Opposition To ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
36. ArthroCare's Supplemental Memorandum In Response To The Supplemental Declaration Of Robert A. Armitage, filed September 3, 1998;
37. Direct Testimony Of John T. Raffle In Support Of ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
38. Direct Testimony Of Philip E. Eggers In Support Of ArthroCare's Motion For Preliminary Injunction, filed September 3, 1998;
39. Joint Statement Regarding Differences Between The Two Translations Of The Elsasser And Roos Article Proffered By Defendants, filed September 22, 1998;
40. Memorandum Decision And Order Regarding Preliminary Injunction Motion, issued December 2, 1998;
41. Ethicon's Response To ArthroCare's First Set Of Interrogatories To Defendant Ethicon, served November 6, 1998;
42. Plaintiff ArthroCare's Response To Defendant Gynecare, Inc.'s First Set Of Interrogatories, served November 10, 1998;
43. Plaintiff ArthroCare's Response To Mitek's First Set Of Interrogatories, served November 10, 1998;

44. Plaintiff ArthroCare's Response To Defendant Ethicon, Inc.'s First Set Of Interrogatories, served November 10, 1998;
45. Plaintiff ArthroCare's Objections And Responses To Defendants' First Set Of Requests For Admissions, served January 4, 1999;
46. Plaintiff ArthroCare's Objections And Responses To Defendant Gynecare, Inc.'s Second Set Of Interrogatories, served January 4, 1999;
47. Plaintiff ArthroCare's Supplemental Objections And Responses to Defendants' Request For Admission No. 36, served January 5, 1999;
48. Expert Witness Report Of John R. LaCourse, served January 8, 1999;
49. Expert Witness Report Of Robert D. Tucker, served January 8, 1999;
50. Expert Witness Report Of David J. Parins, served January 8, 1999;
51. Expert Witness Report Of Robert A. Armitage, Esq., served January 8, 1999;
52. Expert Witness Report Of Massoud Motamed, Ph.D., served January 8, 1999;
53. Expert Witness Report Of Ashley J. Welch, Ph.D., served January 8, 1999;
54. Responsive Expert Report Of Leslie A. Geddes, Ph.D., served January 29, 1999;
55. Responsive Expert Report Of Donald W. Banner served January 29, 1999;
56. Supplemental Expert Report Of David J. Parins served February 9, 1999;
57. Ethicon's Motion For Summary Judgment Of Invalidity For Failure To Satisfy The Requirements Of 35 U.S.C. §§102-103, filed March 5, 1999;
58. Joint Statement Of Uncontested Facts In Support Of Ethicon's Motion For Partial Summary Judgment Of Invalidity Under 35 U.S.C. §§102 And 103, filed March 5, 1999;
59. Plaintiff ArthroCare's Opposition To Defendants' Motion For Summary Judgment Of Invalidity Under 35 U.S.C. §§102-103, filed March 18, 1999;
60. Ethicon's Reply Memorandum In Support Of Motion For Summary Judgment Of Invalidity Under 35 U.S.C. §§102 And 103, filed March 25, 1999;
61. Ethicon's Motion For Partial Summary Judgment Of Invalidity For Failure To Satisfy The Requirements Of 35 U.S.C. §112, filed March 5, 1999;
62. Joint Statement Of Uncontested Facts In Support Of Ethicon's Motion For Partial Summary Judgment For Invalidity For Failure To Satisfy The Requirements Of 35 U.S.C. §112, filed March 5, 1999;
63. Plaintiff ArthroCare's Opposition To Defendants' Motion For Partial Summary Judgment Of Invalidity For Failure To Satisfy The Requirements Of 35 U.S.C. §112, filed March 18, 1999;

64. Ethicon's Reply Memorandum In Support Of Motion For Partial Summary Judgment Of Invalidity For Failure To Satisfy The Requirements Of 35 U.S.C. §112, filed March 25, 1999;
65. Declaration Of Leslie A. Geddes, Ph.D., In Support Of ArthroCare's Oppositions To Defendants Motions For Partial Summary Judgment, filed March 18, 1999;
66. Plaintiff ArthroCare's Motion For Partial Summary Judgment That Claims Are Not Anticipated Or Rendered Obvious By Certain References, filed March 5, 1999;
67. Ethicon's Opposition To ArthroCare's Motion For Partial Summary Judgment That Claims Are Not Anticipated Or Rendered Obvious By Certain References, filed March 18, 1999;
68. ArthroCare's Reply Brief In Support Of ArthroCare's Motion For Partial Summary Judgment That Claims Are Not Anticipated Or Rendered Obvious By Certain References, filed March 25, 1999;
69. Plaintiff ArthroCare's Motion For Partial Summary Judgment Of No Inequitable Conduct Or, Alternatively, For Bifurcation, filed March 5, 1999;
70. Joint Statement Of Undisputed Facts In Support Of ArthroCare's Motion For Partial Summary Judgment Of No Inequitable Conduct Or, Alternatively, For Bifurcation, filed March 5, 1999;
71. Ethicon's Opposition Of Plaintiff ArthroCare's Motion For Partial Summary Judgment Of No Inequitable Conduct Or Alternatively For Bifurcation, filed March 18, 1999;
72. Declaration Of Robert A. Armitage, Esq., In Support Of Defendant Ethicon, Inc.'s Opposition To ArthroCare's Motion For Summary Judgment, filed March 18, 1999;
73. Plaintiff ArthroCare's Reply Brief In Support Of Its Motion For Partial Summary Judgment Of No Inequitable Conduct Or, Alternatively, For Bifurcation, filed March 25, 1999;
74. Plaintiff ArthroCare's Motion For Partial Summary Judgment That Defendants Cannot Prevail On Their Enablement And Written Description Defenses As To Certain Claims, filed March 5, 1999;
75. Joint Statement Of Undisputed Facts In Support Of ArthroCare's Motion For Partial Summary Judgment That Defendants Cannot Prevail Under Enablement And Written Description Defenses As To Certain Claims, filed March 5, 1999;
76. Ethicon's Opposition To ArthroCare's Motion For Partial Summary Judgment That Defendants Cannot Prevail On Their Enablement And Written Description Defenses As To Certain Claims, filed March 18, 1999;
77. ArthroCare's Reply Brief In Support Of ArthroCare's Motion For Partial Summary Judgment That Defendants Cannot Prevail On Their Enablement And Written Description Defenses As To Certain Claims, filed March 25, 1999;

78. Defendants' Trial Brief On The Issues Of Unenforceability And Invalidity Under 35 U.S.C. §§102, 103, And 112, filed March 29, 1999;
79. Plaintiff ArthroCare's Trial Brief Re: Validity And Enforceability Of The Patents-In-Suit, filed April 7, 1999;
80. Defendants' Notice Of Prior Art Pursuant To 35 U.S.C. §282, filed April 9, 1999;
81. April 26, 1999 Letter From Defendants To The Court Regarding Additional Claim Construction Issues;
82. Joint Proposed Jury Instructions For Claims 46, 55, 58, 59, 61, And 62 Of U.S. Patent No. 5,697,536;
83. April 30, 1999 Letter From ArthroCare To The Court Regarding Additional Claim Construction Issues;
84. Expedited Motion Of Plaintiff ArthroCare Corporation Regarding Joint Jury Instructions, filed May 13, 1999.

In addition to the above-listed materials, there are numerous other papers that were filed with the Court in connection with the *Ethicon* litigation, some of which were designated confidential pursuant to a protective order. Furthermore, depositions were taken of numerous witnesses regarding validity and enforceability issues, some of which are also confidential. If the Examiner desires, Applicant will submit any or all of the listed materials, other papers filed with the court, and/or transcripts of depositions to the Examiner for consideration, or, if necessary, will contact the parties who designated such material confidential and inquire into changing the designation of such material. Applicant will also provide any additional information that the Examiner desires about the *Ethicon* litigation or the materials described herein.

**B.      *Smith & Nephew* litigation**

On July 25, 2001, ArthroCare Corporation commenced an action in the United States District Court for the District of Delaware against Smith & Nephew, Inc. ("Smith & Nephew") for infringement of U.S. Patent Nos. 5,697,536 ("the '536 Patent"), 5,697,882 ("the '882 Patent") and 6,224,592 ("the '592 Patent"). That action was assigned Civil Action No. 01-504-SLR (the "*Smith & Nephew* litigation"). The *Smith & Nephew* litigation proceeded to trial commencing on April 30, 2003. On May 12, 2003, the jury returned a verdict in favor of ArthroCare on infringement and validity issues with respect to all three patents. A copy of the jury's verdict, dated May 12, 2003, is enclosed. Thereafter, on June 20, 2003, the Court entered judgment on the jury's verdict. A copy of the judgment is enclosed.

Numerous papers were filed with the Court during the *Smith & Nephew* litigation. The official docket kept by the clerk of the Delaware District Court, which is 43 pages long, is enclosed. The files holding the documents corresponding to the docket entries on the official docket span approximately eight linear feet of shelving space. Applicant is enclosing herewith the following

documents from the *Smith & Nephew* litigation which show Smith & Nephew's and Applicant's primary arguments relating to issues of validity and enforceability:

1. Smith & Nephew's Supplemental Responses to Plaintiff ArthroCare's Interrogatories Nos. 4 And 5, dated December 19, 2001;
2. Smith & Nephew's Supplemental Invalidity And Infringement Contentions, served March 29, 2002<sup>1</sup>;
3. Smith & Nephew's Supplemental Invalidity Contentions, served June 3, 2002;
4. Smith & Nephew's Supplemental Invalidity Contentions, served September 10, 2002;
5. Smith & Nephew's Supplemental Invalidity Contentions, served October 9, 2002;
6. ArthroCare's Validity Contentions, served October 15, 2002;
7. Memorandum Order Re: Claim Construction, filed April 9, 2003;
8. Smith & Nephew's Notice Pursuant To 35 U.S.C. § 282;
9. Trial Testimony Of Smith & Nephew's Expert Dr. Kim Manwaring on May 6, 2003;
10. Trial Testimony Of Smith & Nephew's Expert Dr. Kenneth Taylor on May 7 & 8, 2003;
11. Jury Verdict, dated May 12, 2003;
12. Judgment In A Civil Case, filed June 20, 2003;
13. Smith & Nephew's Opening Brief In Support Of Its Inequitable Conduct Case, filed June 9, 2003;
14. Smith & Nephew's Opening Brief In Support Of Its Rule 50(b) Motion For Judgment As A Matter Of Law, filed June 30, 2003;
15. ArthroCare's Corrected Answering Brief In Opposition To Smith & Nephew's Opening Brief In Support Of Its Inequitable Conduct Case, filed July 11, 2003<sup>2</sup>;
16. ArthroCare's Answering Brief In Opposition To Smith & Nephew's Rule 50(b) Motion For Judgment As A Matter Of Law, filed July 30, 2003;
17. Smith & Nephew's Reply Brief In Support Of Its Rule 50(b) Motion For Judgment As A Matter Of Law, filed August 14, 2003.

In addition to the above documents, a number of post trial motions were filed on the issues of infringement, invalidity, and inequitable conduct. In particular, Smith & Nephew filed a motion for judgment as a matter of law; a motion for a new trial; a cross motion to strike ArthroCare's motion for entry

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1. Smith & Nephew marked its infringement contentions "Highly Confidential – Attorneys' Eyes Only" under the protective order. Accordingly, Applicant has secured redacted pages that omit Smith & Nephew's infringement contentions from this document.

<sup>2</sup> Smith & Nephew's Reply Brief In Support Of Its Inequitable Conduct Case, dated July 24, 2003, was filed under seal by Smith & Nephew. If the Examiner requests a copy, Applicant will contact Smith & Nephew in an attempt to secure an agreement by which the brief can be disclosed.

of judgment of no inequitable conduct and a motion to modify the protective order. ArthroCare filed a motion for entry of judgment of no inequitable conduct and a motion for a permanent injunction.

On March 10, 2004 the Court ruled in favor of ArthroCare on all post trial motions. The Court issued a 90 page memorandum opinion: 1.) denying Smith & Nephew's motion for judgment as a matter of law; 2.) denying Smith & Nephew's motion for a new trial; 3.) granting ArthroCare's motion for entry of judgment of no inequitable conduct; 4.) denying Smith & Nephew's cross motion to strike ArthroCare's motion for entry of judgment of no inequitable conduct; 5.) granting ArthroCare's motion for a permanent injunction; and 6.) denying Smith & Nephew's motion to modify the protective order.

The Court also issued, on March 10, 2004, a memorandum opinion granting ArthroCare's motion to dismiss Smith & Nephew's antitrust counterclaims.

The above mentioned memorandum opinions and corresponding orders are enclosed for your consideration.<sup>3</sup>

On June 9, 2004, the Court issued an order enjoining Smith and Nephew from directly infringing, inducing the infringement, and contributing to the infringement of the '536 Patent, the '882 Patent and the '592 Patent. The above mentioned memorandum opinions and corresponding orders are enclosed for your consideration<sup>4</sup>. Smith & Nephew has appealed the judgment and the injunction to the United States Court of Appeals for the Federal Circuit. This brief is enclosed.

On May 10, 2005, the Federal Circuit Court of Appeals issued a decision (attached) in connection with the lawsuit between ArthroCare and Smith & Nephew. In its decision, the Court, among other things, upheld the jury's verdict in favor of ArthroCare on U.S. Patent Nos. 5,697,882 and 6,224,592, but reversed the jury's verdict as to the validity of claims 46, 47, and 56 of U.S. Patent No. 5,697,536.

On May 23, 2005, Patentee filed a Combined Petition for Panel Rehearing and Rehearing *En Banc* (attached). The Petition specifies several points of law and fact overlooked or misapprehended by the Court of Appeals for the Federal Circuit in its May 10, 2005 Decision relating to the '536 Patent, the '882 Patent, and the '592 Patent. The Court issued an Order, dated July 12, 2005, denying Patentee's request for a panel rehearing and rehearing *En Banc*.

On September 2, 2005, ArthroCare and Smith & Nephew entered into a settlement agreement settling the legal disputes arising from the *Smith & Nephew* litigation. Attached is the Form 8-k,

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<sup>3</sup> A portion of the memorandum opinion discussing the antitrust issues has been redacted to preserve information that is confidential.

<sup>4</sup> A portion of the memorandum opinion discussing the antitrust issues has been redacted to preserve information that is confidential.

dated September 9, 2005, filed in connection with this material definitive agreement between ArthroCare and Smith & Nephew.

In addition to the above-listed materials, there are numerous other papers that were filed with the Court or served in connection with the *Smith & Nephew* litigation that relate to invalidity or enforceability issues. These include, for example, the expert reports of Dr. S. Nahum Goldberg (ArthroCare's expert on infringement and validity), Dr. Kenneth Taylor (Smith & Nephew's expert on infringement and invalidity), Dr. Kim Manwaring (Smith & Nephew's expert on invalidity), Dr. Michael Choti (Smith & Nephew's expert on infringement and invalidity), Charles Van Horn (ArthroCare's expert on patent prosecution issues), and Ronald Panitch (Smith & Nephew's expert on patent prosecution issues). Smith & Nephew also served a paper purportedly prepared by Dr. Brian Skromme of Arizona State University related to the validity of the '882 patent. Moreover, the parties filed motions for summary judgment on issues pertaining to the validity of the patents-in-suit. The briefs in support of and opposition to these motions are listed as docket numbers 247, 248, 257, 258, 261, 262, 280, 283, 292, 298, 300, and 302 on the official docket that ArthroCare has enclosed. Smith & Nephew also produced a declaration from Eberhard Roos, the named inventor on U.S. Patent No. 4,116,198 and co-author of the Roos and Elsasser article ("Über ein Instrument zur leckstromfreien transurethralen Resektion"), both of which were references asserted in the Smith & Nephew litigation. There also are many trial exhibits. In addition, pre-trial depositions were taken of several witnesses regarding validity and enforceability issues, including depositions of Dr. Goldberg, Dr. Taylor, Dr. Manwaring, Dr. Choti, Mr. Van Horn, and Mr. Panitch. A list of the depositions taken in the *Smith & Nephew* litigation is set forth below:

1. John Tighe, taken September 18, 2002 and November 8, 2002 (ArthroCare employee, fact witness);
2. Diane DeLucia, taken September 19, 2002 (Smith & Nephew employee, fact witness);
3. John Raffle, taken September 19, 2002 and November 11, 2002 (ArthroCare employee and patent attorney, fact witness);
4. James Heslin, taken September 24, 2002 (patent attorney, fact witness);
5. Fernando Sanchez, taken September 24, 2002 (ArthroCare employee, fact witness);
6. Duane Marion, taken September 28, 2002 (former Smith & Nephew employee, fact witness);
7. John Graf, taken October 1, 2002 (Smith & Nephew employee, fact witness);
8. Hira Tahpliyal, taken October 1, 2003 and November 14, 2002 (co-inventor of patents-in-suit, fact witness);
9. Jim Pacek, taken October 3, 2002 and November 7, 2002 (ArthroCare employee, fact witness);
10. John Konsin, taken October 3, 2002 (Smith & Nephew employee, fact witness);

11. Jean Woloszko, taken October 3, 2002 (ArthroCare employee, fact witness);
12. Andrew Eggers, taken October 4, 2002 (employee of Eggers & Associates (owned by Philip E. Eggers, co-inventor of patents-in-suit), fact witness);
13. Bruce Prothro, taken October 4, 2002 (ArthroCare employee, fact witness);
14. Kara Weldon, taken October 5, 2002 (current or former Smith & Nephew employee, fact witness);
15. David Balford, taken October 5, 2002 (Smith & Nephew employee, fact witness);
16. Allen Weinstein, taken October 8, 2002 (ArthroCare employee, fact witness);
17. Christine Hanni, taken October 10, 2002 (former ArthroCare employee, fact witness);
18. Linda Guthrie, taken October 11, 2002 (Smith & Nephew employee, fact witness);
19. Michael Baker, taken October 11, 2002 (ArthroCare CEO, fact witness);
20. Kate Knudsen, taken October 11, 2002 and November 7, 2002 (Smith & Nephew employee, fact witness);
21. Sally Maher, taken October 11, 2002 (Smith & Nephew employee, fact witness);
22. Ron Sparks, taken October 11, 2002 (Smith & Nephew CEO, fact witness);
23. Philip E. Eggers, taken October 15 and 29, 2002, November 13, 2002, and April 30, 2003 (co-inventor of patents-in-suit, fact witness);
24. Tom Ross, taken October 15, 2002 (current or former employee of Oratec Interventions, Inc. (acquired by Smith & Nephew), fact witness);
25. Jack Cordes, taken October 15, 2002 (former employee of Eggers & Associates, fact witness);
26. Michael Long, taken October 29, 2002 (former Smith & Nephew employee, fact witness);
27. Joan McCreary, taken October 30, 2002 (Smith & Nephew employee, fact witness);
28. Todd Plevinsky, taken October 31, 2002 (former Smith & Nephew employee, fact witness);
29. Karen Drucker, taken November 1 and 14, 2002 (Smith & Nephew employee, fact witness);
30. Allen Gannon, taken November 1, 2002 (Smith & Nephew employee, fact witness);
31. Jim Pacek, taken November 7, 2002 (ArthroCare employee, fact witness);
32. Tim Crabtree, taken November 7, 2002 (former Smith & Nephew employee, fact witness);
33. John Konsin, taken November 7, 2002 (Smith & Nephew employee, fact witness);
34. Jason Krieser, taken November 13, 2003 (Smith & Nephew employee, fact witness);
35. Dr. Kim Manwaring, taken March 20, 2003 (Smith & Nephew expert witness);
36. Dr. Eliot Leitman, taken March 25, 2003 (ArthroCare expert witness);
37. Dr. Kenneth Taylor, taken March 27 and 28, 2003 (Smith & Nephew expert witness);

39. Ronald Panitch, taken March 28, 2003 (Smith & Nephew expert witness);
40. Dr. Michael Choti, taken March 30, 2003 (Smith & Nephew expert witness);
41. Charles Van Horn, taken April 3, 2003 (ArthroCare expert witness);
42. Creighton Hoffman, taken April 4, 2003 (ArthroCare expert witness);
43. Brian Napper, taken April 17, 2003 (Smith & Nephew expert witness);
44. Warren Heim, taken April 22, 2003 (consultant to Smith & Nephew, fact witness).

Smith & Nephew designated many of the materials from the *Smith & Nephew* litigation as confidential pursuant to the protective order in that case. Without admitting the materiality or relevance of the foregoing materials, Applicant will submit any or all of the foregoing materials to the Examiner for consideration or, if the Examiner requests materials that have been filed under seal or designated confidential pursuant to the protective order, Applicant will contact Smith & Nephew in an attempt to secure an agreement by which such materials can be disclosed.

## II. REEXAMINATION

### A. The '536 Patent

On December 23, 1999, an *Ex Parte* Reexamination Request ("Request") for the '536 Patent was filed with the PTO. Applicant has enclosed a copy of the file history for the '536 Reexamination with this Information Disclosure Statement. The Request sought reexamination of claims 1-3, 14, 16, 22, 27, 30, 33, 38, 41-48, 55, 57, 60, and 63 of the '536 Patent in light of U.S. Patent 4,116,198 ("the Roos '198"). The PTO granted the Request on October 27, 2000.

On November 15, 2002, the PTO mailed an Office Action. The Office Action is divided into two sections. Section I sets forth the conclusion of the examiner and a board of primary examiners that "the Roos '198 does not anticipate or render obvious any of the independent claims of record." *See* November 15, 2002 Office Action at 3. Section II contains a rejection of claims 1-64 of the '536 Patent as anticipated under 35 U.S.C. § 102(b) and obvious under 35 U.S.C. § 103 in light of certain references identified in an Information Disclosure Statement filed by Applicant on June 19, 2002. On December 19, 2002, Applicant submitted a Response to the Office Action.

On March 14, 2003, the PTO issued a Notice of Intent to Issue *Ex Parte* Reexamination Certificate ("NIRC"). The NIRC states that "the examiner of record concurs with the arguments presented by patent Applicant on paper number 15. Accordingly, it is concluded that claims 1-64 are allowable over the prior art of record." *See* NIRC at 2. A Reexamination Certificate issued on June 10, 2003.

Additionally, on April 9, 2003, another *Ex Parte* Reexamination Request for the '536 Patent was filed with the PTO. The Request sought reexamination of claims 1, 2, 5, 9, 14, 15, 25, 26, 28, 30-33, 36, 38, 40, 42-47, 49, 53, 55, 56, 58, 59, 61, and 63 of the '536 Patent in light of the Roos '198; Elasser and Roos, "Über ein Instrument zur leckstromfreien transurethralen resektion," Medizinal-Markt/Acto Medicotechnica, Vol. 24, No. 4/1976, pp. 129-134 ("the Elasser and Roos article"); U.S. Patent Nos. 4,805,616; 4,674,499; 4,381,007; 5,217,459; and 5,007,908. The PTO granted the Request on June 30, 2003. It has been assigned Reexamination No. 90/006,597.

An Office Action issued on November 18, 2004. Applicant filed a timely reply on January 18, 2005. On September 19, 2005, the PTO issued a NIRC indicating that Claims 1-64 were patentable or confirmed.

#### B. The '882 Patent

On April 18, 2003, an *Ex Parte* Reexamination Request for the '882 Patent was filed with the PTO. The Request sought reexamination of claims 1, 13, 17, 18, 24, 26, 28, 29, 48 and 54 of the '882 Patent in light of U.S. Patent Nos. 5,122,138; 5,007,908; and Slager et al., "Vaporization Of Atherosclerotic Plaques By Spark Erosion," JACC Vol. 5, No. 6, June 1985:1382-6 ("the Slager Article"). The PTO granted the Request on July 1, 2003. It has been assigned Reexamination No. 90/006,607.

An Office Action issued on February 18, 2005. Applicant filed a timely reply on April 18, 2005.

On April 28, 2006, the PTO issued a NIRC indicating that Claims 2-13, 15, 16, 21, 22, 25, 27, and 32-36 were patentable or confirmed. New Claims 57-67 were patentable. Claims 28-31 and 37-56 were amended, and Claims 1, 14, 17-20, 23, 24, and 26 were cancelled.

#### C. The '592 Patent

On April 21, 2003, an *Ex Parte* Reexamination Request for the '592 Patent was filed with the PTO. The Request sought reexamination of claims 1, 3, 4, 9, 11, 21, 23, 26, 27, 30, 32 and 42 of the '592 Patent in light of the Roos '198; the Elasser and Roos article; U.S. Pat. Nos. 4,381,007 to Doss; and the Slager Article. The PTO granted the Request on July 7, 2003. It has been assigned Reexamination No.

90/006,611.

An Office Action issued on April 14, 2005 and April 26, 2005. Applicant filed a timely reply on June 27, 2005.

On April 27, 2006, the PTO issued a NIRC indicating that Claims 7, 8, 10, 29, 31, and 32 were patentable or confirmed. Claims 1-6, 9, 11-28, 30 and 33-43 were cancelled.

On September 12, 2006, the PTO issued an EX PARTE REEXAMINATION CERTIFICATE indicating that Claims 7, 8, 10, 29, 31, and 32 were confirmed. Claims 1-6, 9, 11-28, 30 and 33-43 were cancelled.

Should the Examiner desire copies of any of the documents filed in connection with the above reexaminations Applicant will submit them upon a request to do so in writing from the Examiner.

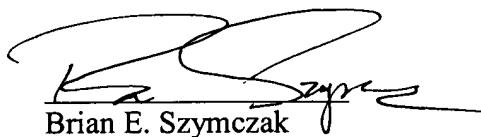
### III. CO-PENDING PATENT APPLICATIONS

The following is a list of co-pending applications:

<b>Application No.</b>	<b>Filing Date</b>	<b>Application No.</b>	<b>Filing Date</b>
09/293,231	16-Apr-1999	10/437,260	13-May-2003
09/314,247	18-May-1999	10/392,529	20-Mar-2003
09/338,842	23-Jun-1999	10/389,159	14-Mar-2003
09/347,390	06-Jul-1999	10/613,115	03-Jul-2003
09/354,835	16-Jul-1999	10/661,118	12-Sep-2003
09/372,454	11-Aug-1999	10/656,597	05-Sep-2003
09/457,201	06-Dec-1999	10/682,600	09-Oct-2003
		10/713,643	13-Nov-2003
09/501,327	09-Feb-2000	10/735,477	11-Dec-2003
09/586,295	02-Jun-2000		
09/747,311	20-Dec-2000	10/774,222	05-Feb-2004
		10/799,908	12-Mar-2004
09/796,094	28-Feb-2001	10/799,491	12-Mar-2004
09/963,736	03-May-2001	10/903,655	29-Jul-2004
		10/970,796	20-Oct-2004
10/072,599	05-Feb-2002		
10/097,763	13-Mar-2002	11/028,790	03-Jan-2005
10/139,117	03-May-2002	11/089,879	25-Mar-2005
10/187,733	27-Jun-2002	11/105,274	12-Apr-2005
10/288,227	04-Nov-2002	11/114,610	25-Apr-2005
		11/125,613	09-Mar-2005
10/339,470	09-Jan-2003	11/130,931	16-May-2005
10/372,591	21-Feb-2003	11/144,934	03-Jun-2005
10/374,411	25-Feb-2003	11/166,545	24-Jun-2005
10/384,050	05-Mar-2003	11/176,803	06-Jul-2005
10/389,159	13-Mar-2003		

Respectfully submitted  
Attorney for Applicants,

Date: 01/05/2007

  
Brian E. Szymczak  
Reg. No. 47,120

CORRESPONDENCE ADDRESS:

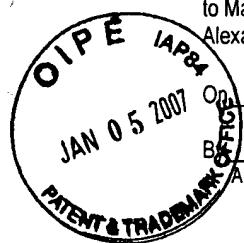
Arthrocure Corporation  
Customer No. **21394**  
(512) 391-3961  
Fax (512) 391-3901

01-08-07

IFW  
75

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail Post No. EQ751343233US and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below:

PATENT  
Attorney Docket No.: S-9-5



1-5-07

Angela Loding

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: David Hovda et al.

Application No.: 10/799,491

Filed: March 12, 2004

For: **METHODS AND APPARATUS FOR  
TREATING INTERVERTEBRAL DISCS**

Confirmation No.: 8367

Examiner: Lee S. Cohen

Art Unit: 3739

**INFORMATION DISCLOSURE  
STATEMENT UNDER  
37 CFR §1.97 and §1.98**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. 1.56, 1.97 and 1.98, Applicants wish to call the attention of the Examiner to the references that are listed on the attached PTO form 1449.

It is respectfully requested that the cited information be considered during the prosecution of this application, and the references be made of record therein and appear among the "references cited" on any patent to issue there from.

These citations do not constitute an admission that the references are relevant or material to the claims.

01/09/2007 SSITHIB1 00000076 500359 10799491

01 FC:1806 180.00 DA

Applicants hereby authorize the Commissioner to charge \$180.00 for the IDS fee to Deposit Account No. 50-0359 of ArthroCare Corporation. The Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.391.3961.

Respectfully submitted  
Attorney for Applicants,

 1-5-07  
Brian E. Szymczak Date  
Reg. No. 47,120

**SEND CORRESPONDENCE TO:**

ARTROCARE CORPORATION  
CUSTOMER NO. **21394**  
512.391.3961  
512.391.3901 (fax)

PTO-1449 <b>Information Disclosure Citation in an Application</b>		Application No. 10/799,491	Applicant(s) David Hovda et al.	
		Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004

## U.S. PATENT DOCUMENTS

	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
A.	2,056,377	10/06/39	Wappler	125	303	08/16/33
B.	3,815,604	06/11/74	O'Malley et al.	128	305	6/19/72
C.	3,828,780	08/13/74	Morrison, Jr. et al.	128	275	03/26/73
D.	3,901,242	08/26/75	Storz	128	303	05/30/74
E.	3,920,021	11/18/75	Hiltebrandt	128	303	5/15/74
F.	3,939,839	02/24/76	Curtiss	128	303	6/26/74
G.	3,970,088	07/20/76	Morrison	128	303	4/24/75
H.	4,040,426	08/09/77	Morrison, Jr.	128	303	1/16/76
I.	4,074,718	02/21/78	Morrison, Jr.	128	303	3/17/76
J.	4,092,986	06/06/78	Schneiderman	128	303	6/14/76
K.	4,116,198	09/26/78	Roos	128	303	5/14/76
L.	4,181,131	01/01/80	Ogiu	128	303	2/23/78
M.	4,184,492	01/22/80	Meinke et al.	128	303	5/30/78
N.	4,202,337	05/13/80	Hren et al.	128	303	6/14/77
O.	4,228,800	10/21/80	Degler, Jr. et al.	128	303	4/4/78
P.	4,232,676	11/11/80	Herczog	128	303	11/16/78
Q.	4,248,231	02/03/81	Herczog et al.	128	303	11/16/78
R.	4,326,529	04/27/82	Doss et al.	128	303	12/5/79
S.	4,381,007	04/26/83	Doss	128	303	4/30/81
T.	4,476,862	10/16/84	Pao	128	303	9/30/82
U.	4,532,924	08/06/85	Auth et al.	128	303	4/30/82
V.	4,548,207	10/22/85	Reimels	128	303	11/17/82
W.	4,567,890	02/04/86	Ohta et al.	128	303	8/7/84
X.	4,590,934	05/27/86	Malis et al.	128	303	5/18/83
Y.	4,593,691	06/10/86	Lindstrom et al.	128	303	7/13/83
Z.	4,660,571	04/28/87	Hess et al.	128	784	7/18/85

EXAMINER

DATE CONSIDERED

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>		Application No.	Applicant(s)		
		10/799,491	David Hovda et al.		
		Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004	

**U.S. PATENT DOCUMENTS**

		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	A.	4,674,499	06/23/87	Pao	128	303	1/10/85
	B.	4,682,596	07/28/87	Bales et al.	128	303	5/22/84
	C.	4,706,667	11/17/87	Roos	128	303	7/28/86
	D.	4,727,874	03/01/88	Bowers et al.	128	303	9/10/84
	E.	4,765,331	08/23/88	Petruzzi et al.	128	303	2/10/87
	F.	4,785,823	11/22/88	Eggers et al.	128	692	7/21/87
	G.	4,805,616	02/21/89	Pao	128	303	11/20/86
	H.	4,823,791	04/25/89	D'Amelio et al.	123	303	5/8/87
	I.	4,832,048	05/23/89	Cohen	128	786	10/29/87
	J.	4,920,978	05/01/90	Colvin	128	784	8/31/88
	K.	4,931,047	06/05/90	Broadwin et al.	604	22	9/30/87
	L.	4,936,301	06/26/90	Rexroth et al.	606	45	6/23/87
	M.	4,936,281	06/26/90	Stasz	128	660	4/13/89
	N.	4,943,290	07/24/90	Rexroth et al.	606	45	4/27/89
	O.	4,966,597	10/30/90	Cosman	606	50	11/4/88
	P.	4,967,765	11/06/90	Turner et al.	128	785	7/28/88
	Q.	4,976,711	12/11/90	Parins et al.	606	48	4/13/89
	R.	4,979,948	12/25/90	Geddes et al.	606	33	4/13/89
	S.	4,998,933	03/12/91	Eggers et al.	606	41	6/10/88
	T.	5,007,908	04/16/91	Rydell	606	47	9/29/89
	U.	5,009,656	04/23/91	Reimels	606	48	8/17/89
	V.	5,035,696	07/30/91	Rydell	606	47	2/2/90
	W.	5,047,026	09/10/91	Rydell	606	48	7/2/90
	X.	5,047,027	09/10/91	Rydell	606	48	4/20/90
	Y.	5,078,717	01/07/92	Parins et al.	606	48	9/10/90
	Z.	5,080,660	01/14/92	Buelna	606	45	5/11/90

EXAMINER	DATE CONSIDERED
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EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>	Application No.	Applicant(s)	
	10/799,491	David Hovda et al.	
	Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004

**U.S. PATENT DOCUMENTS**

	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
A.	5,084,044	01/28/92	Quint	606	27	7/14/89
B.	5,085,659	02/04/92	Rydell	606	47	11/21/90
C.	5,088,997	02/18/92	Delahuerga et al.	606	42	3/15/90
D.	5,098,431	03/24/92	Rydell	606	48	7/3/90
E.	5,099,840	03/31/92	Goble	128	422	1/23/89
F.	5,102,410	04/7/92	Dressel	606	15	10/9/90
G.	5,108,391	04/28/92	Flachenecker et al.	606	38	5/5/89
H.	5,112,330	05/12/92	Nishigaki et al.	606	46	5/23/89
I.	5,122,138	06/16/92	Manwaring	606	46	11/28/90
J.	5,125,928	06/30/92	Parins et al.	606	48	2/19/91
K.	5,167,659	12/01/92	Ohtomo et al.	606	40	5/13/91
L.	5,171,311	12/15/92	Rydell et al.	606	48	9/23/91
M.	5,178,620	01/12/93	Eggers et al.	606	41	2/22/91
N.	5,190,517	03/02/93	Zieve et al.	604	22	6/6/91
O.	5,192,280	03/09/93	Parins	606	48	11/25/91
P.	5,195,959	03/23/93	Smith	604	34	5/31/91
Q.	5,197,963	03/30/93	Parins	606	46	12/2/91
R.	5,197,466	03/30/93	Marchosky et al.	128	399	1/7/92
S.	5,207,675	05/04/93	Canady	606	40	7/15/91
T.	5,217,457	06/08/93	Delahuerga et al.	606	42	5/27/91
U.	5,217,459	06/08/93	Kamerling	606	48	8/27/91
V.	5,267,994	12/07/93	Gentelia et al.	606	15	2/10/92
W.	5,267,997	12/07/93	Farin et al.	606	38	1/15/92
X.	5,273,524	12/28/93	Fox et al.	604	21	10/9/91
Y.	5,277,201	01/11/94	Stern	607	98	5/1/92
Z.	5,281,216	01/25/94	Kliceck	606	42	3/31/92

EXAMINER	DATE CONSIDERED
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<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>			Application No.	Applicant(s)			
			10/799,491	David Hovda et al.			
			Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004		
<b>U.S. PATENT DOCUMENTS</b>							
		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
A.		5,290,282	03/01/94	Casscells	606	29	6/26/92
B.		5,300,069	04/05/94	Hunsberger et al.	606	37	8/12/92
C.		5,306,238	04/26/94	Fleenor	606	42	9/13/91
D.		5,312,400	05/17/94	Bales et al.	606	41	10/9/92
E.		5,314,406	05/24/94	Arias et al.	604	21	10/9/92
F.		5,324,254	06/28/94	Phillips	604	21	1/13/93
G.		5,330,470	07/19/94	Hagen	606	42	7/2/92
H.		5,334,140	08/02/94	Philips	604	35	1/12/93
I.		5,342,357	08/30/94	Nardella	606	40	11/13/92
J.		5,366,443	11/22/94	Eggers et al.	604	114	10/9/92
K.		5,370,675	12/06/94	Edwards et al.	607	101	2/2/93
L.		5,375,588	12/27/94	Yoon	128	4	8/17/92
M.		5,380,277	01/10/95	Phillips	604	33	11/2/93
N.		5,383,917	01/24/95	Desai et al.	607	702	7/5/91
O.		5,383,876	01/24/95	Nardella	606	49	3/22/94
P.		5,395,312	03/07/95	Desai	604	22	5/10/93
Q.		5,401,272	03/28/95	Perkins	606	15	2/16/94
R.		5,417,687	05/23/95	Nardella et al.	606	32	4/30/93
S.		5,419,767	05/30/95	Eggers et al.	604	114	8/24/93
T.		5,423,810	06/13/95	Goble et al.	606	40	2/25/93
U.		5,423,882	06/13/95	Jackman et al.	607	122	2/25/93
V.		5,436,566	07/25/95	Thompson et al.	324	713	6/1/93
W.		5,438,302	08/01/95	Goble	331	167	7/11/94
X.		5,441,499	08/15/95	Fritzs	606	45	07/13/94
Y.		5,451,224	09/19/95	Goble et al.	606	48	02/25/93
Z.		5,454,809	10/03/95	Janssen	606	41	04/19/94
EXAMINER				DATE CONSIDERED			
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.							

<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>	Application No.	Applicant(s)		
	10/799,491	David Hovda et al.		
	Docket Number	Group Art Unit	Filing Date	
	S-9-5	3739	March 12, 2004	

**U.S. PATENT DOCUMENTS**

		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	A.	5,496,314	3/5/96	Eggers	606	41	10/9/92
	B.	5,496,317	3/5/96	Goble et al.	606	48	5/3/94
	C.	5,496,312	03/05/96	Kliceck	606	34	10/7/93
	D.	5,514,130	05/07/96	Baker	606	41	10/11/94
	E.	5,556,397	09/17/96	Long et al.	606	48	10/26/94
	F.	5,569,242	10/29/96	Lax et al.	606	42	10/29/96
	G.	5,571,100	11/5/96	Goble et al.	606	41	10/28/94
	H.	5,584,872	12/17/96	LaFontaine et al.	607	117	3/11/94
	I.	5,609,151	03/11/97	Mulier et al.	128	642	9/18/94
	J.	5,633,578	5/27/97	Eggers et al.	323	301	7/15/94
	K.	5,647,869	07/15/97	Goble et al.	606	37	6/28/95
	L.	4,043,342	08/23/97	Morrison, Jr.	128	303	2/26/76
	M.	5,662,680	09/02/97	Desai	606	210	10/28/94
	N.	5,676,693	10/14/97	LaFontaine et al.	607	116	6/14/94
	O.	5,681,282	10/28/97	Eggers et al.	604	114	4/11/95
	P.	5,683,366	11/04/97	Eggers et al.	604	114	11/22/95
	Q.	5,697,281	12/16/97	Eggers et al.	604	114	6/7/95
	R.	5,697,882	12/16/97	Eggers et al.	604	114	11/22/95
	S.	5,697,909	12/16/97	Eggers et al.	604	114	11/24/94
	T.	5,697,536	12/16/97	Eggers et al.	604	114	11/18/96
	U.	5,700,262	12/23/97	Acosta et al.	606	48	10/16/95
	V.	5,725,524	03/10/98	Mulier et al.	606	41	1/3/96
	W.	5,766,153	06/16/98	Eggers et al.	604	114	12/05/96
	X.	5,807,395	09/15/98	Mulier et al.	606	41	04/22/97
	Y.	5,810,764	09/22/98	Eggers et al.	604	23	07/18/96
	Z.	5,810,809	09/22/98	Rydell	606	49	01/13/97

EXAMINER	DATE CONSIDERED
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<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>	Application No.	Applicant(s)	
	10/799,491	David Hovda et al.	
	Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004

**U.S. PATENT DOCUMENTS**

		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	A.	5,843,019	12/01/98	Eggers et al.	604	22	7/18/96
	B.	5,860,975	1/19/99	Goble et al	606	45	12/15/95
	C.	5,871,469	02/16/99	Eggers et al.	604	114	2/5/97
	D.	5,873,855	02/23/99	Eggers et al.	604	114	11/22/96
	E.	5,885,277	03/23/99	Korth	606	35	2/27/97
	F.	5,888,198	03/30/99	Eggers et al.	604	114	12/5/96
	G.	5,891,095	03/30/99	Eggers et al.	604	114	12/5/96
	H.	5,897,553	04/27/99	Mulier	606	41	11/2/95
	I.	5,902,272	05/11/99	Eggers et al.	604	114	7/16/96
	J.	5,944,715	08/31/99	Goble et al.	606	41	11/25/96
	K.	5,954,716	09/21/99	Sharkey et al.	606	32	2/19/98
	L.	6,004,319	12/21/99	Goble et al.	606	48	8/26/96
	M.	6,013,076	01/11/00	Goble et al.	606	41	10/25/96
	N.	6,015,406	01/18/00	Goble et al.	606	41	8/21/96
	O.	6,024,733	02/15/00	Eggers et al.	604	500	11/22/95
	P.	6,027,501	02/22/00	Goble et al.	606	41	10/21/96
	Q.	6,039,734	03/21/00	Goble et al.	606	41	7/27/98
	R.	6,056,746	05/02/00	Goble et al.	606	48	3/27/98
	S.	6,063,079	05/16/00	Hovda et al.	606	41	4/2/98
	T.	6,066,134	05/23/00	Eggers et al.	606	32	10/23/98
	U.	6,068,628	05/30/00	Fanton et al.	606	41	08/20/96
	V.	6,074,386	06/13/00	Goble et al.	606	34	08/06/97
	W.	6,090,106	07/18/00	Goble et al.	606	41	03/26/98
	X.	6,093,186	07/25/00	Goble et al.	606	34	12/18/97
	Y.	6,102,046	08/15/00	Weinstein et al.	128	898	6/2/98
	Z.	6,109,268	08/29/00	Thapliyal et al.	128	898	12/15/97

EXAMINER

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<b>PTO-1449</b> <b>Information Disclosure Citation</b> <b>in an Application</b>	Application No.	Applicant(s)	
	10/799,491	David Hovda et al.	
	Docket Number S-9-5	Group Art Unit 3739	Filing Date March 12, 2004

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		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	A.	6,117,109	09/12/00	Eggers et al.	604	114	9/28/98
	B.	6,126,682	10/03/00	Sharkey et al.	607	96	9/15/98
	C.	6,142,992	11/07/00	Cheng et al.	606	34	4/10/98
	D.	6,149,620	11/21/00	Baker et al.	604	22	2/12/99
	E.	6,159,194	12/12/00	Eggers et al.	604	500	10/2/97
	F.	6,159,208	12/12/00	Hovda et al.	606	41	3/15/99
	G.	6,168,593	01/02/01	Sharkey et al.	606	34	2/12/98
	H.	6,179,836	01/30/01	Eggers et al.	606	45	10/28/98
	I.	6,179,824	01/30/01	Eggers et al.	604	500	06/13/97
	J.	6,183,469	02/06/01	Thapliyal et al.	606	41	01/02/98
	K.	6,190,381	02/20/01	Olsen et al.	606	32	01/21/98
	L.	6,203,542	03/20/01	Ellsberry et al.	606	41	04/21/99
	M.	6,210,402	04/03/01	Olsen et al.	606	32	11/25/97
	N.	6,224,592	05/01/01	Eggers et al.	606	32	07/27/98
	O.	6,228,081	05/08/01	Goble	606	34	06/30/99
	P.	6,235,020	05/22/01	Cheng et al.	606	34	04/10/98
	Q.	6,238,391	05/29/01	Olsen et al.	606	41	06/11/99
	R.	6,254,600	07/03/01	Willink et al.	606	41	06/11/99
	S.	6,261,286	07/17/01	Goble et al.	606	34	10/16/98
	T.	6,264,652	07/24/01	Eggers et al.	606	41	05/18/99
	U.	6,277,112	08/21/01	Underwood et al.	606	32	2/20/98
	V.	6,293,942	09/25/01	Goble et al.	606	38	05/02/96
	W.	6,296,636	10/02/01	Cheng et al.	606	32	07/21/99
	X.	6,296,638	10/02/01	Davison et al.	606	41	11/20/98
	Y.	6,306,134	10/23/01	Goble et al.	606	42	10/16/98
	Z.	6,312,408	11/06/01	Eggers et al.	604	114	12/5/06

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	A.	6,322,549	11/27/01	Eggers et al.	604	500	01/06/00
	B.	6,355,032	03/12/02	Hovda et al.	606	32	02/27/98
	C.	6,363,937	04/02/02	Hovda et al.	128	898	05/06/98
	D.	6,379,351	04/30/02	Thapliyal et al.	606	41	02/18/00
	E.	6,391,025	05/21/02	Weinstein et al.	606	41	03/13/98
	F.	6,416,507	07/09/02	Eggers et al.	606	32	01/18/00
	G.	6,416,508	07/09/02	Eggers et al.	606	32	02/15/00
	H.	6,432,103	08/13/02	Ellsberry et al.	606	41	06/26/00
	I.	6,468,274	10/22/02	Alleyne et al.	606	32	10/11/00
	J.	6,468,275	10/22/02	Wampler et al.	606	48	6/23/00
	K.	6,482,201	11/19/02	Olsen et al.	606	41	7/27/00
	L.	6,517,498	02/11/03	Burbank et al.	600	564	7/20/00
	M.	6,530,922	03/11/03	Cosman	606	34	1/27/00
	N.	6,589,237	07/08/03	Woloszko et al.	606	41	1/19/01
	O.	6,602,248	08/05/03	Sharps et al.	606	32	9/28/00
	P.	6,620,156	09/16/03	Garito et al.	606	50	9/20/02
	Q.	6,632,193	10/14/03	Davison et al.	604	22	1/5/00
	R.	6,632,220	10/14/03	Eggers et al.	606	41	11/12/99
	S.	6,749,608	6/15/04	Garito et al.	606	45	8/5/02
	T.	6,780,180	08/24/04	Goble et al.	606	41	3/8/00
	U.	6,780,178	08/24/04	Palanker et al.	600	41	5/3/02
	V.	6,802,842	10/12/04	Ellman et al.	606	45	1/2/03
	W.	6,920,883	07/26/05	Bessette et al.	128	898	11/08/02
	X.	6,929,640	08/16/05	Underwood et al.	606	32	02/24/00
	Y.	6,949,096	09/27/05	Davison et al.	606	41	01/21/03
	Z.	6,960,204	11/01/05	Eggers et al.	606	32	07/16/03

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		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
A.		6,974,453	12/13/05	Woloszko et al.	606	41	04/20/01
B.		6,991,631	01/31/06	Woloszko et al.	606	41	02/13/03
C.		7,004,941	02/28/06	Tvinnereim et al.	606	41	11/07/02
D.		7,070,596	07/04/06	Woloszko et al.	606	41	10/03/00
E.		7,090,672	08/15/06	Underwood et al.	606	41	07/02/03
F.		7,094,215	08/22/06	Davison et al.	604	22	03/28/03
G.		7,104,986	09/12/06	Hovda et al.	606	32	05/12/03
H.		7,131,969	11/07/06	Hovda et al.	606	45	05/01/00
I.		4896671	1/30/90	Cunningham	128	642	8/1/88
J.		4958539	9/25/90	Stasz	76	104.100	6/2/89
K.		4976709	12/11/90	Sand	606	999.999	6/30/89
L.		5137530	8/11/92	Sand	606	005	6/29/90
M.		5201729	4/13/93	Hertzmann	606	002	11/30/90
N.		5230334	7/27/93	Klopotek	128	999.999	1/22/92
O.		5318564	6/7/94	Eggers	606	047	5/1/92
P.		5403311	4/4/95	Abele	606	049	3/29/93
Q.		5433739	7/18/95	Sluijter	607	99	11/2/93
R.		5439446	8/8/95	Barry	604	096	6/30/94
S.		5458596	10/17/95	Lax	606	031	5/6/94
T.		5542945	8/6/96	Fritsch	606	41	9/12/94
U.		5562703	10/8/96	Desai	604	33	6/14/94
V.		5660836	8/26/97	Knowlton	424	400	5/5/95
W.		5720744	2/24/98	Eggleston et al.	606	40	6/6/95
X.		5846196	12/8/98	Siekmeyer	600	374	12/12/96
Y.		5980504	11/9/99	Sharkey et al.	604	510	6/27/97
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		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
A.		6007570	12/28/99	Sharkey et al.	607	96	6/24/97
B.		6073051	6/6/00	Sharkey et al.	607	99	6/24/97
C.		4582057	4/15/86	Auth et al.	606	31	11/21/83
D.		4269174	5/26/81	Adair	128	842	8/6/79
E.		4483338	11/20/84	Bloom et al.	606	50	6/12/81
F.		5626576	5/6/97	Janssen	606	41	9/21/95
G.		5785705	7/28/98	Baker	606	32	10/24/95
H.		5823955	10/20/98	Kuck et al.	600	374	11/20/95
I.		5916214	6/29/99	Cosio et al.	606	41	3/28/97
J.		6096036	8/1/00	Bowe et al.	606	41	5/5/98
K.		6122549	9/19/00	Sharkey et al.	607	99	6/24/97
L.		6258086	7/10/01	Ashley et al.	606	41	3/19/99
M.		6319250	11/20/01	Falwell et al.	606	41	11/23/98
N.		6500173	12/31/02	Underwood et al.	606	32	5/18/01
O.		6758846	7/6/04	Goble et al.	606	041	2/2/01
P.		2002/0049438	4/25/02	Sharkey et al.	606	041	6/29/01
Q.		6095149	8/1/00	Sharkey et al.	128	898	6/24/97
R.		7014633	3/21/06	Cragg	604	500	5/3/01
S.		6214001	4/10/01	Casscells et al.	606	41	4/24/98
T.							
U.							
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Y.							
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							YES      NO
	A.	94/14383	12/22/92	WO	A61B	17/00	X
	B.	98/01087	6/13/97	WO	A61B	18/14	X
	C.	98/11944	9/17/97	WO	A61N	1/06	X
	D.	98/17190	10/22/97	WO	A61B	17/00	X
	E.	99/47058	3/19/99	WO	A61B	18/14	X
	F.	57-57802	04/05/82	JP	A61B	1/00	X
	G.	97/48345	12/24/97	WO	A61B	17/39	X
	H.	98/27880	07/02/98	WO	A61B	17/39	X
	I.	92/21278	12/10/92	WO	A61B	5/04	X
	J.	94/08654	04/28/94	WO	A61M	37/00	X
	K.	97/00647	01/09/97	WO	A61B	17/39	X
	L.	97/00646	01/09/97	WO	A61B	17/39	X
	M.	2 327 350	01/27/99	GB	A61B	17/39	X
	N.	2 327 351	01/27/99	GB	A61B	17/39	X
	O.	2 327 352	01/27/99	GB	A61B	17/39	X
	P.	0 694 290	11/15/00	EP	A61B	18/04	X
	Q.	0 754 437	01/22/97	EP	A61B	17/39	X
	R.	0703461	3/27/96	EP	G01R	27/02	X

**NON-PATENT DOCUMENTS**

	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)	DATE
S.	Pearce, John A. "Electrosurgery", pgs. 17, 69-75, 87, John Wiley & Sons, New York.	1986
T.	J.W. Ramsey et al., "A Comparison of Bipolar and Monopolar Diathermy Probes in Experimental Animals", <i>Urological Research</i> Vol. 13, pp. 99-102	1985
U.	V.E. Elsasser et al., "An Instrument for Transurethral Resection without Leakage of Current" <i>Acta Medicotechnica</i> Vol. 24, No. 4, pp. 129-134	1976
V.	P.C. Nardella <i>SPIE</i> 1068:42-49 Radio Frequency Energy and Impedance Feedback	1989
W.	R. Tucker et al., Abstract P14-11, p. 248, "A Bipolar Electrosurgical Turp Loop"	11/1989

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						YES	NO
A.	3930451	3/21/91	DE	A61B	17/39	X	
B.	0740926	11/06/96	EP	A61B	17/39	X	
C.	57-117843	07/22/82	JP	A61B	17/39	X	
D.	99/51158	10/14/99	WO	A61B	17/39	X	
E.	99/51155	10/14/99	WO	A61B	17/36	X	
F.	97/48346	12/24/97	WO	A61B	17/39	X	
G.	95/34259	12/21/95	WO	A61F	5/48	X	
H.	98/27879	07/02/98	WO	A61B	17/36	X	
I.	97/24994	07/17/97	WO	A61B	17/39	X	
J.	97/24993	07/17/97	WO	A61B	17/39	X	
K.	97/24074	07/10/97	WO	A61B	17/39	X	
L.	97/24073	07/10/97	WO	A61B	17/39	X	
M.	93/13816	07/22/93	WO	A61B	17/36	X	
N.	90/07303	07/12/90	WO	A61B	17/39	X	
O.	98/07468	02/26/98	WO	A61N	1/40	X	
P.	94/04220	03/03/94	WO	A61N	A61N	X	
Q.	96/00042	01/04/96	WO	A61B	17/39	X	
R.	2 308 979	07/16/97	GB	A61B	17/36	X	

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S.	R. Tucker et al. "A Comparison of Urologic Application of Bipolar Versus Monopolar Five French Electrosurgical Probes" <i>J. of Urology</i> Vol. 141, pp. 662-665,	1989
T.	R. Tucker et al. "In vivo effect of 5 French Bipolar and Monopolar Electrosurgical Probes on the Porcine Bladder" <i>Urological Research</i> Vol. 18, pp. 291-294	1990
U.	Kramolowsky et al. "Use of 5F Bipolar Electrosurgical Probe in Endoscopic Urological Procedures" <i>J. of Urology</i> Vol. 143, pp. 275-277	1990
V.	Kramolowsky et al. "The Urological App of Electorsurgery" <i>J. of Urology</i> Vol. 146, pp. 669-674	1991
W.	Slager et al. "Spark Erosion of Arteriosclerotic Plaques" <i>Z. Kardiol.</i> 76:Suppl. 6, 67-71	1987
X.	Slager et al. "Vaporization of Atherosclerotic Plaques by Spark Erosion" <i>JACC</i> 5(6):1382-6	6/1985

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A.	2 308 980	07/16/97	GB	A61B	17/36	X	
B.	2 308 981	07/16/97	GB	A61B	17/36	X	
C.	93/20747	10/28/93	WO	A61B	5/00	X	
D.	90/03152	04/05/90	WO	A61B	17/39	X	
E.	2313949	01/07/77	FR	A61N	3/02	X	
F.	01/87154	5/18/01	WO	A61B	5/05	X	

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G.	Olsen MD, Bipolar Laparoscopic Cholecstectomy Lecture (marked confidential), 12 pgs	10/7/91
H.	Codman & Shurtleff, Inc. "The Malis Bipolar Electrosurgical System CMC-III Instruction Manual", 15 pgs	7/1991
I.	Valley Forge's New Products, CLINICA, 475, 5	11/6/91
J.	Valley Forge Scientific Corp., "Summary of Safety and Effective Information from 510K", 2pgs	1991
K.	Codman & Shurtleff, Inc. "The Malis Bipolar Coagulating and Bipolar Cutting System CMC-II" brochure, early, 2pgs	1991
L.	L. Malis, "The Value of Irrigation During Bipolar Coagulation" See ARTC 21602, 1 pg	4/9/93
M.	L. Malis, "Excerpted from a seminar by Leonard I. Malis, M.D. at the 1995 American Association of Neurological Surgeons Meeting," 1pg	1995
N.	L. Malis, "Electrosurgery, Technical Note," J. Neursurg., Vol. 85, 970-975, 11/96	11/1996
O.	Ian E. Shuman, "Bipolar Versus Monopolar Electrosurgery: Clinical Applications," Dentistry Today, Vol. 20, No. 12, 7 pgs	12/2001
P.	Protell et al., "Computer-Assisted Electrocoagulation: Bipolar v. Monopolar in the Treatment of Experimental Canine Gastric Ulcer Bleeding," Gastroenterology Vol. 80, No. 3, pp. 451-455	1981
Q.	Cook et al., "Therapeutic Medical Devices: Application and Design", Prentice Hall, Inc., 3pgs	1982
R.	Valleylab SSE2L Instruction Manual, 11 pgs	1/6/83
S.	Robert D. Tucker et al., "Demodulated Low Frequency Currents from Electrosurgical Procedures," Surgery, Gynecology and Obstetrics, 159:39-43	1984
T.	Lu, et al., "Electrical Thermal Angioplasty: Catheter Design Features, In Vitro Tissue Ablation Studies and In Vitro Experimental Findings," Am J. Cardiol Vol. 60, pp. 1117-1122	11/1/87
U.	Selikowitz et al., "Electric Current and Voltage Recordings on the Myocardium During Electrosurgical Procedures in Canines," Surgery, Gynecology & Obstetrics, Vol. 164, 219-224	3/1987

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A.	J. O'Malley, Schaum's Outline of Theory and Problems of Basic Circuit Analysis, McGraw-Hill, 2 <sup>nd</sup> Ed., pp. 3-5			1992	
B.	Arnaud Wattiez et al., "Electrosurgery in Operative Endoscopy," Electrosurgical Effects, Blackwell Science, pp. 85-93			1995	
C.	Leslie A. Geddes, "Medical Device Accidents: With Illustrative Cases" CRC Press, 3 pgs			1998	
D.	Wyeth, "Electrosurgical Unit" pp. 1181-1202				
E.	C.P. Swain, et al., "Which Electrode, A Comparison of four endoscopic methods of electrocoagulation in experimental bleeding ulcers" Gut Vol. 25, pp. 1424-1431			1987	
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G.	A.K. Dobbie, "The Electrical Aspects of Surgical Diathermy, Bio Medical Engineering" Bio-Medical Engineering Vol. 4, pp. 206-216			5/1969	
H.	B. Lee et al. "Thermal Compression and Molding of Artherosclerotic Vascular Tissue with Use" JACC Vol. 13(5), pp. 1167-1171			1989	
I.	K. Barry et al., "The Effect of Radiofrequency-generated Thermal Energy on the Mechanical and Histologic Characteristics of the Arterial Wall in Vivo: Implications of Radiofrequency Angioplasty" American Heart Journal Vol. 117, pp. 332-341			1982	
J.	W. Honig, "The Mechanism of Cutting in Electrosurgery" IEEE pp. 58-65			1975	
K.	Pearce, John C., "Electrosurgery", Handbook of Biomedical Engineering, chapter 3, Academic Press Inc., N.Y., pp. 98-113			1988	
L.	M.B. Dennis et al. "Evolution of Electrofulguration in Control of Bleeding of Experimental Gastric Ulcers," Digestive Diseases and Sciences, Vol. 24, No. 11, 845-848			11/1979	
M.	Letter from Department of Health to Jerry Malis dated July 25, 1985, 1 pg			7/25/85	
N.	Letter from Jerry Malis to FDA dated July 25, 1985, 2 pgs			7/25/85	
O.	Letter from Department of Health to Jerry Malis dated 1/24/91, 3 pgs			1/24/91	
P.	Leonard Malis, "Instrumentation for Microvascular Neurosurgery" Cerebrovascular Surgery, Vol 1, 245-260			1985	
Q.	Valleylab, Inc. "Valleylab Part Number 945 100 102 A" Surgistat Service Manual, pgs 1-46			7/1988	
R.	Leonard I. Malis, "New Trends in Microsurgery and Applied Technology," Advanced Technology in Neurosurgery, 1-16			1988	
S.	Saal, J. et al., "Thermal characteristics and the lumbar disc: evaluation of a novel approach to targeted intradiscal thermal therapy", NASS-APS, First Joint Meeting, Charleston SC			4/1998	
EXAMINER			DATE CONSIDERED		
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.					